

**In the United States District Court
for the Southern District of Georgia
Brunswick Division**

2005 JUL 27 PM 3:55
[Signature]

UNITED STATES OF AMERICA, :

CIVIL ACTION

v. :

JAMES CHARLES GARDNER, JR., :
a.k.a. Chuck Gardner, :

Defendant. :

NO. CR203-025

O R D E R

Defendant, James Charles Gardner, Jr., also known as Chuck Gardner, moved for credit for time served for prior custody. In an order filed on July 11, 2005, the Court denied Gardner's motion. Gardner filed a notice of appeal from that order on August 1, 2005, more than ten days after judgment was entered, which is the applicable time limit for filing such an appeal. Fed. R. App. P. 4(b)(1)(A).


Because Gardner filed his notice of appeal within forty days of entry of judgment, however, Gardner's motion was construed as a motion for an extension of time to appeal. See Fed. R. App. P. 4(b)(4); United States v. Ward, 696 F.2d 1315, 1317-18 (11th Cir. 1983).

The case is presently before the Court on a limited remand from the Eleventh Circuit, with instructions to determine whether excusable neglect or good cause existed for Gardner's failure to file his notice of appeal within the time allowed by law. To that end, the Court ordered Gardner to show cause to explain his delay.

In response, Gardner offered an explanation regarding why he was delayed in filing his initial motion for credit for prior custody before the district court, and he offered arguments going to the merits of his claim. However, Gardner's filing was unresponsive to the show cause order, which asked him to explain his delay in filing the notice of appeal. See Dkt. No 59.

In sum, the Court finds no support for the assertion that Gardner's delay in filing his notice of appeal was based on excusable neglect or good cause. The motion for an extension of time to file the notice of appeal is **DENIED**. Fed. R. App. P. 4(b)(4). The Clerk is directed to send the record, as supplemented, along with a certified copy of this Order and an updated, indexed docket sheet, to the Court of Appeals for further action.

SO ORDERED, this 27th day of September, 2005.



JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA